

EXECUTED IN 6 COUNTERPARTS
OF WHICH THIS IS NO. 5

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INTERSTATE COMMERCE COMMISSION

AGREEMENT

Dated as of May 1, 1976

between

WHITTAKER CORPORATION,
BERWICK FORGE & FABRICATING DIVISON

and

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

Covering

120 100-Ton 50' Box Cars

THIS AGREEMENT, dated as of May 1, 1976, by and between WHITTAKER CORPORATION, BERWICK FORGE & FABRICATING DIVISION, a California corporation (Manufacturer), and THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation (C&O);

W I T N E S S E T H :

The Manufacturer and C&O heretofore entered into a letter Agreement dated April 8, 1976 (a copy of which letter Agreement is made a part hereof by reference), and such addenda thereto and modifications thereof as may have been or may be agreed upon in writing between the Manufacturer and C&O, whereunder the Manufacturer agreed to construct at its Berwick, Pennsylvania plant and to deliver to C&O at Saginaw, Michigan, or at such other point or points as directed by C&O, and C&O agreed to accept and pay for 120 100-ton 50' box cars to bear C&O road numbers 480100 - 480219, inclusive (Cars).

As contemplated by said letter Agreement, C&O intends to finance the purchase of the Cars from the Manufacturer pursuant to a Conditional Sale Agreement to be dated as of June 1, 1976, but deliveries of the Cars are scheduled to begin on or about May 25, 1976, and C&O will not have established said financing arrangement by that time nor be in position to take such deliveries thereunder. C&O represents that such financing arrangement will be established, however, on or before July 1, 1976. C&O, in order that it may use the Cars pending establishment of such financing arrangement, has arranged with the Manufacturer to give it temporary custody and possession of the Cars upon their completion, solely as a

(b) pay any and all taxes, fines, charges and penalties that may accrue or be assessed or imposed upon the Cars or the Manufacturer,

because of the Manufacturer's ownership or because of the use, operation, management or handling of the Cars by C&O during the term of this Agreement. C&O's obligations contained in this paragraph shall survive the termination of this Agreement.

C&O will, at its own expense, keep and maintain the Cars in good order and running condition and will at its option repair or replace or promptly pay to Manufacturer the purchase price in cash of those Cars which may be damaged or destroyed by any cause during the term of this Agreement.

Prior to the delivery of each Car to C&O under this Agreement it will be numbered with a road number as hereinbefore indicated, and there shall be plainly, distinctly, permanently and conspicuously stencilled upon each side of each Car, in contemplation of said financing arrangement, the following legend in letters not less than one inch in height:

"OWNED BY A BANK OR TRUST COMPANY UNDER A SECURITY AGREEMENT
FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 20c"

C&O hereby agrees to indemnify the Manufacturer against any liability, loss or expense incurred by it as a result of the placing of the aforementioned markings on the Cars.

In case, during the continuance of this Agreement, such markings shall at any time be removed, defaced or destroyed on any Cars, C&O shall immediately cause the same to be restored or replaced.

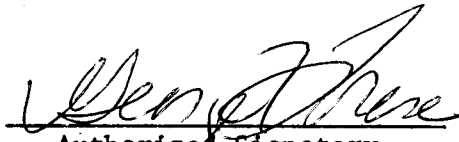
All or any of the rights, benefits or advantages of the Manufacturer, including the right to receive the purchase price of the Cars

as provided in the letter Agreement, may be assigned by the Manufacturer and reassigned by any assignee at any time or from time to time, provided, however, that no such assignment shall subject any such assignee to any of the Manufacturer's warranties, indemnities or any other obligations contained in this Agreement or in the letter Agreement relating to the Cars. In the event the Manufacturer assigns its rights to receive the payments herein and/or under the letter Agreement, and C&O receives written notice thereof from the Manufacturer, together with a counterpart of such assignment stating the identity and the post office address of the assignee, all payments thereafter to be made by C&O under this Agreement, shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to C&O.

In the event of any assignment by the Manufacturer of its rights to receive any payments under this Agreement or under the letter Agreement, the rights of such assignee to such payments as may be assigned together with any other rights hereunder which can be and are so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer in respect to the Cars, nor subject to any defense, set-off, counterclaim or receoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to C&O by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by C&O, its successors and assigns only against the Manufacturer and its successors and assigns (other than assignees as such of rights, benefits or advantages assigned pursuant to this Agreement).

C&O agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to C&O of the Cars, as contemplated by this Agreement, shall not relieve C&O of its obligations to accept, take and pay for the Cars in accordance with the terms of the letter Agreement, or impair any of the Manufacturer's rights under the letter Agreement.

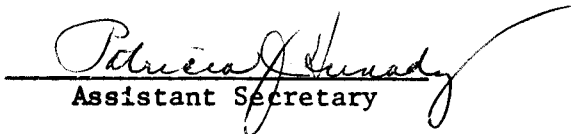
Attest:


Authorized Signatory

WHITTAKER CORPORATION,
BERWICK FORGE & FABRICATING DIVISION

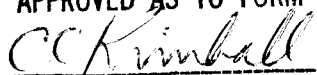
By 
Authorized Signatory

Attest:


Assistant Secretary

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

By 
Assistant Vice-President
and Treasurer

APPROVED AS TO FORM

GENERAL ATTORNEY
4/29/76

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF COLUMBIA)

SS:

On this 3RD day of May, 1976, before me personally appeared James J. Malatras to me personally known, who, being by me duly sworn, says that he is an Authorized Signatory of WHITTAKER CORPORATION, BERWICK FORGE & FABRICATING DIVISION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Lloyd H. Adams

LLOYD H. ADAMS, NOTARY PUBLIC
BERWICK BOROUGH, COLUMBIA COUNTY
MY COMMISSION EXPIRES SEPT. 10 1978
Member, Pennsylvania Association of Notaries

STATE OF OHIO)

COUNTY OF CUYAHOGA)

SS:

On this 29th day of April, 1976, before me personally appeared L. C. ROIG, JR., to me personally known, who, being by me duly sworn, says that he is Assistant Vice-President and Treasurer of THE CHESAPEAKE AND OHIO RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Clara Masuga
CLARA MASUGA

Notary Public, Cuyahoga County, Ohio
My Commission Expires April 21, 1979